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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

RED LION HOTELS FRANCHISING, INC.,

Plaintiff.

V.

12 CENTURY-OMAHA LAND, LLC, et al.,

Defendants.

No. 2:18-cv-00131

MOTION OF RED LION TO CONFIRM ARBITRATION AWARD

Noting Date: June 21, 2019
Without Oral Argument

I. INTRODUCTION

16 Red Lion seeks an order confirming the arbitration award (the “Award”)
17 issued and signed by Arbitrator Thomas McPhee on May 31, 2019 pursuant to the
18 Federal Arbitration Act (“FAA”), 9 U.S.C. § 9. Because the order confirming the
19 Award will resolve all remaining claims against all remaining parties, Red Lion also
20 seeks the entry of judgment pursuant to 9 U.S.C. § 13.

II. FACTS

22 On September 14, 2018, Red Lion commenced an arbitration with JAMS,
23 styled *Red Lion Hotels Franchising, Inc. v. Leslie*, Case No. 1160022604.

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1 Declaration of Hugh McCullough ¶ 2, Ex. A. In its demand, Red Lion asserted
2 claims against Leslie for breach of his personal guarantees of a Franchise License
3 Agreement and a Hotel Improvement Financing and Security Agreement (the
4 “Financing Agreement”). *Id.*

5 JAMS appointed Judge Thomas McPhee as arbitrator in November 2018. *See*
6 McCullough Decl. ¶ 3. After reviewing the parties’ briefs, Judge McPhee issued the
7 Award in Red Lion’s favor on May 31, 2019. *See id.* ¶ 4, Ex. B. The Award granted
8 Red Lion the following relief:

- 9 (a) **\$470,343.32** for breach of the Franchise License Agreement;
- 10 (b) **\$1,825,000** in liquidated damages for breach of the Franchise License
11 Agreement;
- 12 (c) **\$269,874.82** for breach of the Financing Agreement;
- 13 (d) **\$162,961.37** in pre-award interest on the principal balance under the
14 Franchise License Agreement calculated to May 31, 2019;
- 15 (e) **\$74,647.10** in pre-award interest on the principal balance under the
16 Financing Agreement calculated to May 31, 2019;
- 17 (f) Post-award interest on \$470,343.32, or any remaining principal balance
18 under the Franchise License Agreement, at the rate of 18 percent per
19 year from June 1, 2019;
- 20 (g) Post-award interest on \$1,825,000 in liquidated damages for breach of
21 the Franchise License Agreement at 12 percent per year from June 1,
22 2019;

- (h) Post-award interest on \$269,874.82, or any remaining principal balance under the Financing Agreement at the rate of 18 percent per year from June 1, 2019;
 - (i) **\$102,958.00** in attorney fees, plus interest at the statutory rate of 12 percent per year from June 1, 2019;
 - (j) **\$10,837.21** in costs, plus interest at the statutory rate of 12 percent per year from June 1, 2019; and
 - (k) **\$9,339.58** for the cost of the arbitration administrative fee and the arbitrator's compensation, plus interest at the statutory rate of 12 percent per year from June 1, 2019.

Id. In total, the Award granted Red Lion \$2,925,961.40 in damages, pre-award interest, costs, and attorney fees. *Id.* The total post-award interest rates awarded were (1) 18 percent per year from June 1, 2019 on the unpaid balance owing under paragraphs (a) and (c) of this motion; (2) 12 percent per year from June 1, 2019 on the unpaid balancing owing under paragraph (b) of this motion; and (3) 12 percent per year from June 1, 2019 on the unpaid balance owing under paragraphs (i), (j), and (k) of this motion.

The Award has not been vacated under 9 U.S.C. § 10 or modified or corrected under 9 U.S.C. § 11. *Id.* ¶ 5. Pursuant to 9 U.S.C. § 9, Red Lion filed this motion within one year after the arbitrator issued the Award.

III. ARGUMENT

The FAA authorizes a party to an arbitration agreement to apply for an order confirming the arbitration award “any time within one year after the award.” 9

1 U.S.C. § 9. “[T]he court **must** grant such an order unless the award is vacated,
2 modified, or corrected as prescribed in section 10 and 11 of this title.” *Id.* (emphasis
3 added). The Ninth Circuit has held that the Court should confirm an arbitration
4 award without reexamining the factual and legal reasoning of the arbitrator because
5 “confirmation is required even in the face of ‘erroneous findings of fact or
6 misinterpretations of law’ . . . [and even if] the Panel may have failed to understand
7 or apply the law.” *French v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 784 F.2d
8 902, 906 (9th Cir. 1986) (citations omitted).

9 Leslie has not sought to vacate, modify, or challenge the Award, so the
10 limited statutory ground under sections 10 and 11 of the FAA are not present. Red
11 Lion is therefore entitled to confirmation of the Award, along with entry of
12 judgment in conformity with the Award.

13 IV. CONCLUSION

14 For the foregoing reasons, Red Lion respectfully requests that the Court
15 confirm the Award and enter judgment in conformity with the Award.

16 DATED this 13th day of June, 2019.

17 Davis Wright Tremaine LLP
18 Attorneys for Red Lion Hotels
19 Franchising, Inc.

20 By /s/ Hugh McCullough

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CERTIFICATE OF SERVICE

I certify that on the date of this certificate, I caused the foregoing document to be filed with the Clerk of the Court using the CM/ECF system, and a copy to be mailed by United States Postal Service to the following addresses:

Century-Omaha Land, LLC
c/o Don Wieseler, Registered Agent
909 St. Joseph Street, Suite 1000
Rapid City, SD 57701-3301

Edwin W. Leslie
1402 South 13th Street, 1st Floor
Omaha, Nebraska 68124

I also certify that on the date of this certificate, I e-mailed the foregoing document to Kelly Peterson, in-house counsel to Century-Omaha Land, LLC, at Kelly.peterson@centuryco.net and to Edwin Leslie at eleslie@leslie-hospitality.com.

DATED this 13th day of June, 2019.

/s/ Hugh McCullough

Hugh McCullough

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